TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. ~~426~~ 203.

THE HANOVER NATIONAL BANK OF THE CITY OF NEW YORK, PLAINTIFF IN ERROR,

vs.

MAX MOYSES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TENNESSEE.

FILED NOVEMBER 30, 1900.

(17,981.)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 496.

HE HANOVER NATIONAL BANK OF THE CITY OF NEW YORK, PLAINTIFF IN ERROR,

vs.

MAX MOYSES.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TENNESSEE.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 10, 1900.

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1 Be it remembered that at a circuit court of the United States begun and held for the southern division of the eastern district of Tennessee, at the court-rooms, in the city of Chattanooga, within said district and the sixth circuit, on the first Monday, it being the first day, of October, A. D. 1900.

Present and presiding: The Honorable C. D. Clark, district judge.

On the 10th day of November, 1900, court met pursuant to adjournment.

Present and presiding: The Honorable C. D. Clark, district judge.

Among the proceedings had were the following, to wit:

2 *Cost Bond.*

In the Circuit Court of the United States for the Southern Division of the Eastern District of Tennessee.

THE HANOVER NAT'L BANK OF NEW YORK *vs.* MAX MOYSES. } No. 640. Cost Bond.

I hereby acknowledge myself security for costs in this case.

ANDREWS & SMITH. [SEAL.]

Taken and acknowledged before me this 28 day of Nov., 1899.

R. M. WATKINS,
Deputy Clerk U. S. Circuit Court, E. D. T.

(Endorsed:) No. 640. Filed Nov. 28th, 1899. Henry O. Ewing, clerk, by R. M. Watkins, deputy clerk.

Summons.

The President of the United States of America to the marshal of the eastern district of Tennessee, Greeting:

You are hereby commanded to summon Max Moyses, a citizen of the State of Tennessee, resident in Chattanooga, Hamilton county, if to be found in your district, to be and appear before the judges of the circuit court of the United States, in the sixth circuit, for the southern division of the eastern district of Tennessee, at the Federal court-rooms, in Chattanooga, in said State, on the first Monday
3 in April next, then and there to answer The Hanover National Bank of New York, a corporation duly organized under the national banking laws of the United States of America, being a citizen of the State & city of New York, where it is domiciled & carries on its business, in an action of debt fifteen thousand dollars. Herein fail not and have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Chattanooga, in the said dis-

trict, the 20th day of Nov., in the year of our Lord 1899, and of our Independence 124th.

{ Seal of the Circuit Court of the United States for the Eastern District of Tennessee. }

HENRY O. EWING, *Clerk*,
By R. M. WATKINS,
Deputy Clerk.

(Returned:) Received at Knoxville, Dec. 6, '99, executed as commanded by making known the contents of & by delivering a copy of this writ to Max Moyses, at Knoxville, Knox county, Tennessee, Dec. 6, 1899.

A. G. MATTHEWS,
Deputy Marshal.

(Endorsed:) No. 640. Filed Dec. 7, 1899. Henry O. Ewing, clerk.

4 *Declaration.*

Circuit Court of the United States for the Southern Division of the Eastern District of Tennessee.

The Hanover National Bank of New York, a corporation duly incorporated under the national banking laws of the United States of America, domiciled in the city and State of New York, and a citizen of said city and State of New York, plaintiff, complains of Max Moyses, the defendant, who is domiciled in the city of Chattanooga, State of Tennessee, and who is a resident and citizen of said State of Tennessee.

For that the plaintiff heretofore, to wit, in the circuit court of Washington county, in the State of Mississippi, on the 12th day of December, 1892, by the consideration and judgment of said court recovered against the said defendant, Max Moyses, the sum of $9,074.00, with interest at the rate of ten per cent. per annum and costs, whiein and by the said court were then and there adjudged to the plaintiff for his damages, as well by reason of non-performance by the defendant of certain promises and undertakings then lately made by him to the plaintiff as for his costs and charges in that behalf expended, whereof the said defendant was convicted, as by the record and proceedings thereof remaining in said court appear and as the same also appear by a copy thereof, duly certified according to the act of Congress, filed in this honrable court with this declaration. Said judgment still remains in full force and effect, unreversed or otherwise vacated, and the plaintiff hath not obtained any execution or satisfaction of the same; on the contrary thereof, the said defendant since August 1, 1898, and before the institution of this suit,

5 has had and been granted an adjudication of his discharge in bankruptcy from all his debts, including that herein sued for, rendered on his voluntary petition by the district court of the United States for the eastern district of the southern division of Tennessee under an act of the Congress of the United States of

America approved July 1st, A. D. 1898, entitled "An act to establish a uniform system of bankruptcy throughout the United States," which discharge said plaintiff admits to be good and effectual if said act be valid, but said plaintiff says said act is unconstitutional, null, and void because violative of the fourth clause, section 8, article 1, of the Constitution of said United States, in that it is not uniform, and violative of section 2, article 4, of said Constitution, in that it takes away the rights of citizens of each State to all the privileges and immunities of citizens in the several States, and the determining of these matters arise under the Constitution and laws of the United States, and said plaintiff invokes the jurisdiction of this honorable court because of this and particularizes wherein said act of Congress is violative of said Constitution, in that section 49, said act, denies voluntary bankruptcy to corporations who are citizens of the respective States of the United States, and section 6 of said act allows exemptions to debtors under State laws differing in amounts and values according to the varient State laws, and allows the exemption of the State where the contract was made to be varied at the will of the debtor by simple removal to another State, thus also impairing the obligation of the contract and violating section 10, article 29, said Constitution, and section 12 of said act allows composition with creditors and discharge of the bankrupt by majority and number of creditors against the will of the creditor of the particular con-
6 tract, and section 23 confers on and leaves jurisdiction in State courts, and section 4, said act, denies the right to proceed in involuntary bankruptcy against wage-earners or persons engaged chiefly in farming or the tillage of the soil, and in divers other particulars.

Whereby an action has accrued to the plaintiff to have and demand of the defendant the said sum of $9,074.00, with interest, at the rate of ten per cent. per annum, from December 12, 1892.

Wherefore the plaintiff brings this suit and demands a judgment against the said defendant for the above-mentioned sum of money and interest and costs.

ANDREWS & SMITH,
Pl'ff's Att'ys.

(Endorsed:) No. 640. Hanover National Bank of New York *vs.* Max Moyses. Declaration. Filed Feb'y 15, 1900. R. M. Watkins, D. C.

Transcript of Judgment.

THE STATE OF MISSISSIPPI, }
Washington County. }

Be it remembered that a regular term of the circuit court in and for said county was begun and held at the court-house thereof, in the city of Greenville, county of Washington, and State of Mississippi, on the 12th day of December, A. D. 1892, that being the time and place appointed by law for the holding of the term of said court. There *was* present the Honorable R. W. Williamson, judge of the

fourth judicial district of the State of Mississippi, presiding; Jno. L. Griffin, sheriff of said county; Walton Shields, district attorney; W. K. Gildart, clerk circuit court.

7 Be it remembered that heretofore, to wit, on the 2nd day of April, 1892, there was filed in the clerk's office of said court a certain declaration, which, with the exhibits and endorsements thereon, is in words and figures following, to wit:

STATE OF MISSISSIPPI, }
Washington County. }

In Circuit Court, May Term, 1892.

The Hanover National Bank of New York, a corporation duly incorporated under the national banking laws of the United States of America and domiciled in the city and State of New York, plaintiff, by attorneys, complains of Max Moyses, defendant, of a plea of trespass on the case upon promises, for that on the 28th day of July, 1891, the said defendant, at Greenville, Mississippi, made his certain promissory note in writing of that date and thereby promised on the 7th day of December, 1891, to pay to the order of the Bank of Greenville the sum of nine thousand two hundred and seventy-eight & $\frac{44}{100}$ dollars, for value received, and with interest thereon from date until paid at the rate of ten per cent. per annum, as shown by note hereto attached and made a part of this declaration, and delivered said promissory note to the Bank of Greenville, which said note was by said Bank of Greenville afterwards, at etc., on etc., endorsed and delivered to plaintiff, whereby the said defendant became bound, etc., and in consideration thereof undertook and faithfully promised to pay to plaintiff said sum of money in said promissory note mentioned, together with interest thereon, as provided therein, whenever hereunto afterwards requested; yet, although often requested so to do, the said defendant has hitherto wholly failed and refused
8 to pay said note or any part thereof, to damage of plaintiff $18,000.00. Wherefore plaintiff sues and asks judgment for the amount due on said note, interest thereon, and costs of said suit.

YERGER & PERCY,
Attorneys for Plaintiff.

Filed April 2d, 1892.

W. K. GILDART, *Clerk.*

89,278.44. GREENVILLE, MISS., *July 28th*, 1891.

On December 7th, 1891, after date, I promise to pay to the order of Bank of Greenville nine thousand two hundred & seventy-eight $\frac{44}{100}$ dollars, value received, payable at the Bank of Greenville, with interest, at the rate of ten per cent. per annum, from date until paid.

MAX MOYSES.

(Endorsed:) Pay Hanover nat'l bank, N. Y., or order. Bank of Greenville, Miss. A. S. Olin, cashier. Demand notice & protest waived. Bank of Greenville. A. S. Olin, cashier. Pay to A. S. Olin, *cashier*, Esq., cashier, or order for collection for account of the Hanover National Bank of N. Y. J. M. Donald, cashier.

THE STATE OF MISSISSIPPI, }
Washington County. }

To the sheriff of said county, Greeting:

You are hereby commanded to summon Max Moyses, if to be found in your county, to be and appear in the circuit court of Washington county at next regular term thereof, to be held in Greenville, on the 2nd Monday in May next, then and there to answer the Hanover National Bank of New York in his suit and complaint therein filed in assumpsit of a plea of trespass on the case upon promises; damage, $18,000.00; and have then and there this writ.

Given under my hand and official seal this 2nd day of April, 1892.

[L. S.] W. K. GILDART, *Clerk.*

Received this 2nd day of April, 1892.

JNO. L. GRIFFIN, *Sh'ff.*
By E. A. RABB, *D. S.*

Executed the within process this 4th day of April, 1892, upon the defendant, Max Moyses, in person by handing him a true copy thereof.

9 JNO. L. GRIFFIN, *Sh'ff.*
By D. L. McLEAN, *D. S.*

HANOVER NATIONAL BANK }
vs. } # 7991.
MAX MOYSES. }

This day came the plaintiff, by attorney, and the defendant, being solemnly called, came not, but made default, and it appearing to the court that the defendant has been duly, legally, and personally served with process of summons herein, it is considered by the court that the plaintiff have and recover from the defendant, Max Moyses, the sum of nine thousand and seventy-four dollars, with interest at the rate of ten per cent. per annum, and all costs.

Minute Book 12, page #378.

STATE OF MISSISSIPPI, }
Washington County. }

I, W. K. Gildart, clerk of the circuit court of said county, do hereby certify that the foregoing four pages contain a full, true, and perfect copy of the proceedings had in the case of The Hanover National Bank of New York *vs.* Max Moyses, as the same appears of record and now on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office in Greenville, this 4th day of November, 1899.

WM. K. GILDART,
Circuit Clerk.

[SEAL.]

STATE OF MISSISSIPPI, }
Washington County. }

I, F. A. Montgomery, sole and presiding judge of the 4th
10 judicial district of said county, certify that W. K. Gildart, who gave the foregoing certificate, is now and was at the time of signing the same clerk of said court, and that said court is a court of record, and that his attestation is in due form and his official acts as such are entitled to full faith and credit.

Witness my hand this 4th day of November, 1899.

F. A. MONTGOMERY, *Judge.*

STATE OF MISSISSIPPI, }
Washington County. }

I, W. K. Gildart, clerk of the circuit court of said county, certify that Hon. F. A. Montgomery, whose genuine official signature appears to the above and hereto annexed certificate, is, and was at the time of signing the same, sole and presiding judge of the circuit court in and for the county and State aforesaid, duly commissioned and qualified, and that all his official acts as such are entitled to full faith and credit.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office in Greenville, this 4th day of November, 1899.

W. K. GILDART,
Circuit Clerk.

[SEAL.]

(Endorsed:) Filed Feb'y 15, 1900. R. M. Watkins, D. C.

11 *Demurrer.*

U. S. Circuit Court, S. D. of Eastern District of Tennessee.

HANOVER NATIONAL BANK }
vs. } No. 640.
MAX MOYSES. }

Defendant demurs to the declaration herein filed by the plaintiff for the following reasons:

1st. It is admitted in said declaration that this defendant has received from this honorable court a discharge in bankruptcy under the act of July 1st, 1898, as against (among others) the identical judgment and claim on which this suit is brought, and it is further admitted in said declaration that discharge was good and effectual if said act was valid, and said act has never been held invalid or unconstitutional by any Federal court.

2nd. Because the bankruptcy act of July 1st, 1898, under which, as is admitted in plaintiff's declaration, this defendant has received a discharge in bankruptcy from the identical judgment and claim on which this suit is brought is valid and constitutional.

WHITE & MARTIN,
Sols. for Defendant.

(Endorsed:) Filed April 2nd, 1900. R. M. Watkins, D. C.

Opinion.

HANOVER NAT'L BANK OF N. Y. *v.* MAX MOYSES. } No. 640.

12 Upon the authority of Leidigh Carriage Co. *v.* Stengel, 37 C. C. A., 210; S. C., 95 Fed., 637, the demurrer is sustained and the suit dismissed with costs.

CLARK, *J.*

(Endorsed:) Filed Ap'l 12, 1900. R. M. Watkins, D. C.

Order.

(Entered September 5th, 1900, Journal G, page 95.)

In the Circuit Court of the United States for the Southern Division of the Eastern District of Tennessee.

HANOVER NATIONAL BANK *vs.* MAX MOYSES. }

This cause came on to be heard before the Hon. C. D. Clark, judge, on the declaration and demurrer thereto filed and argument of counsel, and the court, being fully advised, considers the demurrer well taken, and is pleased to sustain the same.

It is therefore ordered, adjudged, and decreed that said demurrer be sustained and said declaration be dismissed.

On motion of the plaintiff, it is allowed to file its amended declaration; which is done.

Amended Declaration.

In the Circuit Court of the United States for the Southern Division of the Eastern District of Tennessee.

13 HANOVER NATIONAL BANK OF NEW YORK, Plaintiff, *vs.* MAX MOYSES, Defendant. }

Amended Declaration.

The Hanover National Bank of New York, a corporation duly chartered and organized under the act of Congress commonly called

the national banking act, domiciled in the city of New York and State of New York, plaintiff, complains of Max Moyses, the defendant, a citizen of the State of Tennessee and a resident of the city of Chattanooga, State of Tennessee, and of the southern division of the district aforesaid, and for its cause of action states:

For that whereas heretofore, to wit, on December 12th, 1892, and long prior thereto, defendant was a citizen and resident of the State of Mississippi, and while such citizen and resident of the State of Mississippi defendant made his certain promissory note, in writing, at Greenville, State of Mississippi, payable to the Bank of Greenville, a banking corporation duly chartered and organized under the laws of the State of Mississippi, for the sum of $9,626.38 and interest thereon, at the rate of 10 % per annum, from date, and then and there delivered the same to said Bank of Greenville, whereby for value received he undertook and promised to pay the said Bank of Greenville said sum, with said interest thereon, on December 10th, 1891; that thereafter and before maturity said Bank of Greenville duly indorsed said promissory note in writing and delivered the same to plaintiff in the State of New York, whereby said sum became due and payable to plaintiff according to the tenor and effect of said promissory note; that thereafter, on, 14 to wit, Jan'y 25th, 1892, said defendant paid to plaintiff on said promissory note the sum of $1,383.33; that the plaintiff heretofore, to wit, on the 12th day of December, 1892, in the circuit court of Washington county, State of Mississippi, being a court of general jurisdiction, and having jurisdiction both of the subject-matter and of the said defendant by personal service of summons duly made upon him, by the consideration and judgment of the said circuit court, recovered against the said defendant, Max Moyses, the sum of $9,074.00, with interest, at the rate of ten per cent. per annum, from said date until paid, together with the costs in that behalf expended, which in and by the said circuit court were then and there adjudged to the plaintiff for his damages by reason of the non-performance by the defendant of his said promissory note, whereof said defendant was convicted, as by the record and proceedings thereof remaining in said court appear, and as appears by a copy of the record of the said proceeding and judgment, duly certified in accordance with the act of Congress and filed with the declaration herein and made part hereof, as is specifically set forth herein.

That said judgment still remains in full force and effect, unappealed from, unreversed, or otherwise vacated, and the plaintiff hath not obtained any execution or satisfaction thereof.

That after the rendition of said judgment and before filing the petition in bankruptcy hereinafter set forth defendant removed from the State of Mississippi and became a citizen and resident of the State of Tennessee, and thereafter, on the — day of ——, 1898, said defendant not being a merchant or a trader, nor engaged in business or in any commercial pursuits, nor using the trade 15 of merchandise, and being without mercantile business of any kind, filed his voluntary petition in bankruptcy in the district court of the United States for the southern division of said

eastern district of Tennessee, under the act of Congress of the United States of America approved July 1st, 1898, entitled "An act to establish a uniform system of bankruptcy throughout the United States," and then and there, *in* the — day of ——, 1898, by a pretended decree or judgment of said district court of the United States, the said defendant on his own petition, as aforesaid, and not at the suit of his creditors proceeding against him for some fraudulent practice on the part of the said Moyses, was adjudged bankrupt, contrary to the 10th amendment to the Constitution of the United States.

That plaintiff, being a non-resident of the State of Tennessee, was not personally served with any writ or summons in said proceedings upon said voluntary petition for adjudication in bankruptcy, and had no notice of any kind, personal or otherwise, of the said proceeding by said voluntary petition for such adjudication, nor was any notice of the proceeding to adjudicate defendant a bankrupt on said voluntary petition given to plaintiff or to any one else, nor is any notice of any kind of such proceeding to adjudicate a person a bankrupt upon his voluntary petition required by said act of Congress, and in this said act of Congress violates the 5th amendment to the Constitution of the United States, in that it deprives plaintiff of his property without due process of law, and said pretended adjudication of defendant as a bankrupt in said proceeding violates said 5th amendment for the same reason.

That said defendant since August 1st, 1898, and before the institution of this suit, has had and been, by said district court,
16 granted an adjudication of his discharge in bankruptcy from all of his debts, including that herein sued for, rendered on his said voluntary petition under said act of Congress, which discharge said plaintiff admits to be good and effectual if said act of Congress and the proceedings thereunder are valid; but plaintiff says that said act violates the Constitution of the United States in that, 1st, it violates said 5th amendment, as aforesaid; 2nd, it violates said 10th amendment; 3d, it violates the 4th clause of section 8, article 1, in that it is not uniform throughout the United States in the property constituting the estate of the bankrupt and the administration and distribution of the estate of the bankrupt in this: (*a*) That section 6 of said act of Congress enacted and gave effect to the variant exemption laws of the several States of the Union, whereby the bankrupt, by the accident of residence or by designedly changing his residence, may increase the amount and value of his property withheld from creditors, and in and by said act bankrupts of several States have variant and not uniform exemptions allowed; that this is especially true of the defendant, whereby by a change of residence after judgment rendered against him from Mississippi to Tennessee he has been able to claim and have allowed a larger amount of property as exempt than was allowed him by the laws of Mississippi, and this as against plaintiff, a citizen of New York.

(*b.*) That by section 8 of said act provisions as to dower and, in case of death, the widow's children's allowance of the several States

are enacted and given effect, and plaintiff avers that the laws of dower and of allowance are variant in the several States, and in this said act is not uniform, and this is especially true of the State of Mississippi, where dower has been abolished; (*c*) that by section 12 compositions are made effectual against the will
17 of the creditor by the act of the majority in number and amount of the claims of creditors and by the sanction of the court, and this also violates said 5th amendment in that it is not due process of law, and that no power is delegated to the Congress by the States to enact laws for the compositions with creditors, and in this said act is contrary to said 10th amendment; that said section 12 of said act gives effect to the variant State laws giving priority of payment to classes of creditors and to the various provisions of said act giving priority of payment, and in this it further violates the rule of uniformity required by article 1, section 8, clause 4, of the Federal Constitution; (*d*) that by section 21 the variant State laws as to the competency of witnesses are enacted and given effect, and thereby the system for the administration of the said bankrupt act varies according to the laws of the several States; (*e*) that by section 23 the jurisdiction of the Federal courts in suits by the trustees as to property of the bankrupt against adverse claimants is governed and controlled by the variant statutes of the several States and the rules of decision thereon of the courts of said States, and thereby is enacted and given effect the variant laws of the several States by said act; that by said section 23 jurisdiction is conferred upon the several courts of the several States under the variant laws and systems of jurisprudence thereof to determine and adjudicate what property belongs to the bankrupt's estate in suits concerning it, and thereby the rights of the creditors and what constitutes the estate are determinable by the variant and often conflicting laws and decisions of the several States; that no appeal is provided for from the State courts in such cases to the circuit court of appeals or to the Supreme Court of the United States, and therefore uniformity of decisions in the Federal and
18 State courts, even in the same State, is not secured; (*f*) that by section 57 (*g*) of said act the claims of creditors who have received preferences shall not be allowed unless they surrender their preferences, and thereby the penalty of forfeiture of all claim upon the estate is inflicted upon a creditor who may have received a small payment unless he shall pay back the amount received. Thereby the act provides an arbitrary statutory forfeiture of the right to participate in the bankrupt's estate in violation of the power conferred upon Congress to provide for the uniform distribution of the estate among the creditors, and in that such preference may cause a forfeiture of the right to participate in the estate, and yet the said preference may be valid against the trustee, and therefore no part of the bankrupt's estate under said section 60*b*; (*h*) that by section 64 a preference is created in favor of the State, county, and municipalities for taxes owing by the bankrupt, contrary to the rule of uniformity of distribution prescribed, and it is beyond the power of the Congress of the United States to create a lien in favor of a State or

individual; that said section 64 (4) violates said uniformity clause and is beyond the power of Congress, as it allows a certain class of workmen, clerks, or servants 3 months' wages; that said section 64 (5) enacts and gives effect to the variant laws of the several States, giving priority of payment to certain debts, under their usual statutes and systems of jurisprudence, out of the funds of the bankrupt's estate; (*i*) that section 67*d* of said act gives effect to and adopts the several variant registry acts of the several States; that by said section 67 (2) the variant statutes as to fraudulent conveyances and the variant decisions of the several State courts thereunder are enacted and given effect, and thereby said act gives effect to and enacts the several variant State statutes and decisions of the several State courts as to what property is "exempt from execution and liability for debts by the laws of his domicile," and thereby only such property and assets as under the variant State statutes and decisions constitute the property of the debtor, according to the local law of the debtor's domicile, are made parts of his estate for administration in bankruptcy; (*j*) that section 4*a* of said act does not provide for a uniform system of bankruptcies, in that it fails to provide that a trading corporation may become a voluntary bankrupt, and in that a wage-earner or a farmer or a tiller of the soil may become a voluntary bankrupt, but cannot be made bankrupt involuntarily, and in that it discriminates against the creditors of certain corporations engaged in commerce and against these corporations themselves, in this, that any corporation engaged principally in manufacturing, trading, printing, publishing, or mercantile pursuits may become an involuntary bankrupt, but none others, and there are many others so engaged and not embraced in said descriptive words, and in that said section 4 requires as a condition precedent to the exercise of the power to declare such corporation a bankrupt that it shall owe debts to the amount of $1,000.00, and in this a discrimination is made against private bankers, in that it permits them to be adjudged involuntary bankrupts, but does not permit banks incorporated under the State laws or national banking laws to be so adjudged, and thereby said persons, corporations, and banks so excluded from the provisions of said act are allowed by law to enjoy the preferences and securities condemned by said act and which are by its terms to be surrendered to the bankrupt's estate for distribution among creditors; that section 7, clause 9, of said act violates the 5th amendment to the Constitution of the United States, in that the bankrupt is compelled to testify against himself to establish a forfeiture of his estate and to incriminate himself; that section 12 of said act violates said 5th amendment to the Constitution of the United States in that, without personal service and against his will, if served with process, a certain number and amount of a bankrupt's creditors can by agreement release and discharge the debt of the absent or non-assenting creditor by composition; that by section 14 of said act provision is made for the discharge of the debtor from all further personal obligations to pay his debts and no provision is made by said act for any personal notice to the creditor of such application for the rendition

of such judgment against him and in favor of the bankrupt; that no provision is made by said act for any notice to creditors, except to such as the bankrupt places in his list of creditors or as filed by the creditors, and then only at least ten days' notice by mail to their respective addresses as they appear in such list of creditors; that this provision for notice is not due process of law within the meaning of said 5th amendment, and such notice by mail is wholly insufficient to support a personal judgment against the creditor, discharging the debtor from all further personal liability upon the contract, and is not due process of law within said 5th amendment; that under the laws of the State of Mississippi as decided by the highest court of said State in Cocke *vs.* Bremer, 68 Miss. Reports, 775, in 1891, where the debtor and the mortgaged property were in the jurisdiction of the court of equity, the court was held to be without jurisdiction to make a decree fixing the rights of the parties in the promissory note secured by the mortgage as against the non-resident holder of the note upon service of process upon such non-resident creditor by process of publication, and that the situs of the debt was the residence of the creditor.

21 That section 21, clauses *e*, *g*, of said act, is void because it enacts and gives effect to the variant State registry laws, contrary to article 1, section 8, clause 4, of the Federal Constitution.

That section 41*a* 11 is void because thereby *is* enacted and given effect the variant and conflicting laws of the several States, contrary to said article 1, section 8, clause 4.

That section 57*i* of said act allows certain preferences and thereby renders the act non-uniform, contrary to said article 1, section 8, clause 4.

That section 57*j* of said act is void because thereby are enacted and given effect the variant laws of the several States as to interest and taxation of costs in suits, contrary to said article 1, section 8, clause 4.

That section 65*c* of said act creates a preference in favor of those creditors who first prove their debts as against those who come in later—1, in the manner of distribution, and, 2, in the amount that the subsequent creditors receive, and, 3, the right to a dividend of such later creditors is conditional—contrary to said article 1, section 8, clause 4.

That section 67*d* is void because thereby certain liens and variant State statutes of registry are incorporated into the act, contrary to said article 1, section 8, clause 4.

That section 7*a* is void because thereby a person is deprived of his constitutional right of silence and is forced to incriminate himself, contrary to the said 5th amendment.

That section 9*a* 2 of said act is contrary to said article 1, section 8, clause 4, in that the State laws on the subject of imprisonment are not uniform.

That section 17*a* 1 violates article 1, section 8, clause 4, in that it creates certain preferences of the taxes of the United States, the State, county, district, or municipality in which the bankrupt resides.

That section 17*a* 4 is contrary to article 1, section 8, clause 4, because thereby the variant State statutes and decisions are
22 embodied in said act.

That section 18*a* of said act violates the said 5th amendment in that thereby a personal judgment may be obtained on a mere service of process by publication.

That section 20*a* 2 is repugnant to article 1, section 8, clause 4, in that it adopts the variant State laws as to what officers may administer an oath.

That section 63*a*, clauses 3 and 5, of said act violates article 1, section 8, clause 4, in that it incorporates into the present act the variant State laws on the subject of taxation of costs in suits and also of priorities in payments.

That section 64*a* violates article 1, section 8, clause 4, in that it gives effect to certain preferences which are not uniform throughout the United States.

That section 70*a* of said act violates article 1, section 8, clause 4, in that in vesting the bankrupt's property in the trustee the variant State exemption laws are expressly recognized as a part of the act, and hence said section is not uniform.

That section 70*i* is void because thereby the conflicting statutes on the subject of fraudulent and voluntary conveyances are incorporated into said act, contrary to article 1, section 8, clause 4, aforesaid.

That section 16*a* of said act is void because thereby the guarantor is deprived of his right to pursue his remedy against the principal debtor, and yet no notice is provided for such guarantor or surety, and hence said parties are deprived of their property without due process of law, contrary to the 5th amendment to the Federal Constitution.

That so numerous are the provisions of said act which are repugnant to the Federal court that it is impossible to enforce said
23 act as it was intended to be enforced when passed by the Congress, and hence the whole of said act is void.

And that all of said act is unconstitutional because throughout its entire scope and extent the word "bankruptcy" is used in a sense that is far broader and more extensive than that given to said term when it was used in the Constitution of the United States as the measure of the power delegated thereby by the States to the Federal Congress, contrary to the 10th amendment to the Federal Constitution and contrary to the true intent and meaning of the delegation of power to pass a uniform system of bankruptcies, as given in article 1, section 8, clause 4.

Plaintiff avers that it never was a party to said bankruptcy proceeding of said defendant and never became a party thereto by entering its appearance therein or by proving its claim or by subjecting itself to the jurisdiction of said court in any way whatever in said bankruptcy proceeding and in said proceeding for discharge; that the situs of the said promissory note upon which said judgment was rendered and of the said judgment therein was never within the jurisdiction of said district court of the United States *of* the southern divis-

ion of the eastern district of Tennessee, and that said court never acquired jurisdiction of plaintiff nor of his debt, and plaintiff avers that the said adjudication pretending to discharge the same is null and void, and that to give it effect would be to deprive plaintiff of his property without due process of law, contrary to said 5th amendment; that section 59 of said act violates the rule of uniformity in the system, in that it requires at least three creditors, with provable debts of $500.00, to qualify them to have the adjudication of involuntary bankruptcy, in this, that it is the acts of the debtor in respect to his creditors that constitutes the basis of the
24 power conferred upon Congress to enable the creditor to protect himself, and not whether any particular number of creditors or of any particular amount are willing to become actors in the proceeding to have the power exercised contrary to said 10th amendment, and in that said section (2) denies the right of employees of the bankrupt or of his relatives, by consang*ui*nity or affinity within the third degree, to be such creditors as are entitled to be counted in the general enumeration of creditors, unless they join in the petition to have the adjudication made, and hence a discrimination is made between those who join in the petition and exactly the same class of persons who do not join in the petition, contrary to said article 1, section 8, clause 4.

That by section 65–2 of said act all of the several variant and conflicting State laws hereinbefore referred to as controlling the amount of the assets and wherein they shall consist *and* made effective by declaring the creditor shall be entitled to collect from the bankrupt's estate no greater amount than shall accrue pursuant to the provisions of said act.

Plaintiff avers that under the operation of the exemption laws of the State of Tennessee defendant was entitled to hold and did hold as exempt property an amount larger and different in character from that allowed as exempt by the laws of the State of Mississippi; that under the laws of the State of Tennessee defendant was entitled to hold as his property to a large amount, which under the laws of the State of Mississippi would have been recoverable by the trustee as property conveyed with intent to hinder, delay, and defraud creditors; that under the laws of the State of Tennessee an estate of dower in defendant's realty is recognized, while in the State of Mississippi dower is abolished.

25 Plaintiff further avers that under the said adoption by Congress of said variant statutes of the several States as parts of said bankruptcy act the said defendant was enabled by his change of domicile and residence to the State of Tennessee to largely decrease the amount and value of the estate that passed to the trustee for creditors from what it would have been if his residence had continued in the State of Mississippi; that under the exemption laws of Texas the value of the homestead is without limit practically, while in Rhode Island no homestead exemption exists. Plaintiff avers that the said act of Congress is unconstitutional and void, and that in the pretended adjudication of bankruptcy of defendant the said court was without jurisdication and said judgment is void, and

that the pretended judgment of said court discharging defendant from all further personal liability on said judgment was without jurisdiction and void for the reason hereinbefore averred.

Whereby an action has accrued to plaintiff to have and demand of the defendant the said sum of $9,074.00, with interest, at the rate of ten per cent. per annum, from December 12th, 1892. Wherefore plaintiff brings this suit and demands judgment against said defendant for the above-mentioned sum of money and interest and costs.

ANDREWS & SMITH,
Attorneys for Plaintiff.

(Endorsed:) Filed Sept. 5, 1900. R. M. Watkins, D. C.

Demurrer to Amended Declaration.

26 In the Circuit Court of the United States for the Southern Division of the Eastern District of Tennessee.

HANOVER NATIONAL BANK
vs.
MAX MOYSES } #640.

The defendant, Max Moyses, demurs to the amended declaration herein filed by the plaintiff on September 5th, 1900, for the following reasons:

I.

It is admitted in said declaration that this defendant "since August 1, 1898, and before the institution of this suit, has had and been, by said district court" of the United States for the southern division of the eastern district of Tennessee, "granted an adjudication of his discharge in bankruptcy from all of his debts, including that herein sued for, rendered on his said voluntary petition under said act of Congress (viz., the act approved July 1st, 1898, entitled 'An act to establish a uniform system of bankruptcy throughout the United States'); which discharge said plaintiff admits to be good and effectual if said act of Congress or the proceedings thereunder are valid," and said act has never been held invalid or unconstitutional by any Federal court.

II.

Because the bankruptcy act of July 1st, 1898, under which, as is admitted in plaintiff's declaration, this defendant has received a discharge in bankruptcy from the identical judgment and claim on which this suit is brought, is valid and constitutional.

27 WHITE & MARTIN,
Sol's for Defendant.

(Endorsed:) Filed Sept. 25, 1900. R. M. Watkins, D. C.

Order.

Entered October 6th, 1900, Journal "G," p. 110.

HANOVER NATIONAL BANK
vs.
MAX MOYSES. } # 640.

This cause was heard upon the demurrer of the defendant to the amended declaration herein filed by plaintiff on the 5th day of September, 1900, and the court being of the opinion that said demurrer is well taken, it is therefore ordered, adjudged, and decreed by the court that defendant's demurrer be sustained and that plaintiff's bill be dismissed, and that the plaintiff, Hanover National Bank, pay all the costs of this cause, for which an execution may issue.

Petition for Writ of Error and Assignment of Errors.

The Circuit Court of the United States for the Southern Division of the Eastern District of Tennessee.

HANOVER NATIONAL BANK OF THE CITY OF New York, Plaintiff,
vs.
MAX MOYSES, Defendant. } At Law. Petition for Writ of Error.

And now comes The Hanover National Bank, plaintiff herein, and says that on or about the 6th day of October, 1900, this court entered judgment herein for the defendant and against this plaintiff, in which judgment and the proceedings had prior thereunto in this cause certain errors were committed, to the manifest prejudice of this plaintiff, all of which will more in detail appear from the assignment of errors which is filed with this petition.

The said Hanover national bank in this cause, by its declaration herein, claimed and asserted a right and privilege under and by virtue of the Constitution of the United States, and said circuit court, by the rendition of said judgment herein, did deny and prohibit to the said The Hanover National Bank said right and privilege asserted as aforesaid, in that the validity of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, was drawn in question as being violative of the Constitution of the United States, and the validity of the said act was maintained by said judgment herein.

Wherefore this plaintiff prays that a writ of error may issue in this behalf to the Supreme Court of the United States of America for the correction of errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the said Supreme Court.

ANDREWS & SMITH,
Att'ys for the Hanover National Bank.

Assignment of Errors.

In the Supreme Court of the United States, October Term, 1901.

29 THE HANOVER NATIONAL BANK OF THE CITY OF New York, Plaintiff in Error,
vs.
MAX MOYSES, Defendant in Error. } No. —.

Comes The Hanover National Bank of the City of New York, plaintiff in error, and says that in the record and proceedings aforesaid there is manifest error in this:

1st. That the said circuit court sustained the demurrer of the defendant to plaintiff's declaration.

2nd. That the court rendered judgment in favor of defendant and against plaintiff, whereas by law the judgment ought to have been given in favor of said The Hanover National Bank and against said Moyses. Wherefore it prays that said judgment be reversed and the cause remanded to said circuit court for further proceedings, according to law.

MARCELLUS GREEN,
Attorney for Plaintiff in Error.

(Endorsed:) Filed Nov. 10th, 1900. Henry O. Ewing, clerk.

Bond on Writ of Error.

Circuit Court of the United States for the Southern Division of the Eastern District of Tennessee.

30 THE HANOVER NATIONAL BANK OF THE City of New York
v.
MAX MOYSES. } No. —. At Law.

Know all men by these presents that we, The Hanover National Bank of the City of New York, as principal, and C. M. Preston, as surety, are held and firmly bound unto Max Moyses, defendant above named, in the sum of five hundred dollars, to be paid to the said Moyses, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our successors, representatives, and assigns, firmly by these presents.

Sealed with our seals and dated the 9th day of November, 1900.

Whereas the above-named plaintiff, The Hanover National Bank, has sued out a writ of error to the Supreme Court of the United States of America to reverse the judgment in the above-entitled cause by the circuit court of the United States for the southern division of the eastern district of Tennessee:

Now, therefore, the condition of this obligation is such that if the above-named The Hanover National Bank shall prosecute said writ

to effect and answer all costs and damages if it shall fail to mak good *his* plea, then this obligation shall be void; otherwise to remain in full force and virtue.

HANOVER NATIONAL BANK
OF NEW YORK. [SEAL.]
By GREEN & GREEN, *Att'ys.*
C. M. PRESTON. [SEAL.]

Approved:
C. D. CLARK,
U. S. District Judge and Sole Presiding in said Circuit Court.

31 (Endorsed:) Filed Nov. 10th, 1900. Henry O. Ewing, clerk.

Order Allowing Writ of Error.

Entered November 10th, 1900, Journal "G," p. 139.

THE HANOVER NATIONAL BANK OF THE CITY of New York, Plaintiff,
v.
MAX MOYSES, Defendant. } No. —. At Law.

This 10th day of November, 1900, came the plaintiff, by *his* attorneys, and filed herein and presented to the court *his* petition praying for the allowance of a writ of error intended to be urged by it, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as may be proper in the premises; on consideration whereof the court does allow the writ of error, as prayed, upon the plaintiff giving bond, according to law, in the sum of five hundred dollars, which shall operate as a supersedeas bond.

C. D. CLARK,
U. S. District Judge and Sole Presiding in said Circuit Court.

32 THE UNITED STATES OF AMERICA, } ss:
Eastern District of Tennessee, Southern Division. }

I, Henry O. Ewing, clerk of the circuit court of the United States within and for the district aforesaid, do hereby certify that the foregoing 31 pages is a full, true, and perfect transcript of the record, proceedings, and papers in the case of The Hanover National Bank of the City of New York against Max Moyses, No. 640, as the same appear in my office.

Seal Circuit Court of the United States, Eastern District of Tennessee.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Chattanooga, Tennessee, this 14th day of November, A. D. 1900.

HENRY O. EWING, *Clerk.*

33 *Citation in Error.*

United States of America to Max Moyses or his attorneys of record:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the 7th day of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern division of the eastern district of Tennessee, wherein The Hanover National Bank is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment *of* the said writ of error mentioned should not be corrected and speedy justice should — be done to the parties in that behalf.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court, this 10th day of November, in the year of our Lord one thousand nine hundred.

C. D. CLARK.
U. S. District Judge and Sole Presiding in said Circuit Court.

[Endorsed:] No. —. Circuit court of the U. S. for the southern division of eastern dist. Tenn. The Hanover National Bank, plaintiff, *v.* Max Moyses, defendant. Citation in error. G. & G.

34 *Writ of Error.*

UNITED STATES OF AMERICA:

Supreme Court of the United States.

The President of the United States to the honorable the judge of the circuit court of the United States for the southern division of the eastern district of Tennessee, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between The Hanover National Bank of the City of New York, plaintiff in error, and Max Moyses, defendant in error, a manifest error hath happened, to the great damage of the said The Hanover National Bank, plaintiff in error, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington on 7th day of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal Circuit Court of the United States, Eastern District of Tennessee.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 10th day of November, in the year of our Lord one thousand nine hundred.

HENRY O. EWING,
Clerk of the Circuit Court of the United States,
Eastern District of Tennessee.

Allowed by—
C. D. CLARK,
District Judge and Sole Presiding
in said Circuit Court.

35 Service of the within writ of error and the within citation of error and the receipt of a copy of each is hereby admitted this 13th day of November, 1900.

WHITE & MARTIN,
Att'ys for Defendant in Error.

[Endorsed:] No. —. Supreme Court of the United States. The Hanover National Bank of the City of New York, plaintiff in error, *v.* Max Moyses, defendant in error. Acknowledgment of service of writ of error and citation by —— ——, attorneys of record of defendant in error. G. & G.

36 Answer of the judges of the circuit court of the United States in and for the southern division of the eastern district of the State of Tennessee.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said court to the Supreme Court of the United States within mentioned, at the day and place within contained, in a certain schedule to this writ annexed, as within we are commanded.

By the court:

{ Seal Circuit Court of the United States, Eastern District of Tennessee. }

HENRY O. EWING, *Clerk.*

[Endorsed:] No. —. Supreme Court of the United States. The Hanover National Bank, plaintiff in error, *v.* Max Moyses, defendant in error. Writ of error and clerk's answer thereto. G. & G.

Endorsed on cover: File No., 17,981. E. Tennessee C. C. U. S. Term No., 496. The Hanover National Bank of the City of New York, plaintiff in error, *vs.* Max Moyses. Filed November 30th, 1900.